IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO.17 OF 2006
UNDER THE PROVISIONS OF SECTION 37(2)(a)
OF THE ARBITRATION AND CONCILIATION ACT 1996

Seatrans Shipping Limited. ...Appellant.

vs.

Maldar Dredgers and Salvagers Pvt.Ltd. ...Respondents

Mr.Ashwin Shankar, for Appellant.

Mr.Khatri, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 12th July, 2006.

P.C.:-

1. Heard the learned Counsel appearing for the Appellant. I have gone through the order. The appellant is not right in contending that he becomes entitled to an interim order of security without he satisfying the Arbitrator that he has made out a prima facie case that he will be entitled to an Award and that his interest are in jeopardy which are required to be protected. Even when in a suit filed in the Admiralty

jurisdiction of the Court, the plaintiff approaches the Court for order of arrest of vessel, he has to satisfy the Court prima facie that he has a claim against the owner of the vessel or that he has provided any essential services to the vessel. Once this case is prima facie established, when the Court finds that the vessel is of foreign registry and the owner is also residing beyond the territorial jurisdiction of the Court, in a foreign country, the Court makes an order of arrest. Even in the admiralty suit, therefore, there is not an automatic order of arrest. Therefore, the basic submission of the appellant before the Arbitrator was infirm and there was a basic flaw in perception of law.

2. So far as reliance placed on the judgment of the Court of Appeal in “253 The “Varna”, CA Apr.15 and 21, 1993” delivered by “Lord Justice Scott And Lord Justice Rose”, in my opinion, that judgment also cannot be said to be laying down the law that in Admiralty Suit the Court is under a duty to make an order of arrest even when the plaintiff does not have prima facie case to show that he would be entitled to a decree against the vessel. The petition is therefore, rejected.